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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

GN Docket No. 93-252

In the Matter of)
)
Implementation of)
Sections 3(n) and 332 of)
the Communications Act)
)
Regulatory Treatment of Mobile)
Services)

To: the Commission

REPLY COMMENTS OF RADIOFONE, INC.

Radiofone Inc. (Radiofone) hereby responds to Comments requested by the October 8, 1993 Notice of Proposed Rule Making (NPRM) in the captioned proceeding, by submitting, pursuant to Section 1.415(c) of the Commission's Rules, and by its attorney, these Reply Comments.

Radiofone desires to respond to Comments addressing two issues. First, Radiofone urges that paging services offered "to the public, or to such classes of eligible users as to be effectively available to the public"¹ must be regulated as commercial mobile service providers. Therefore, Radiofone concurs with Comments of Paging Network, Inc. (PageNet) at pp. 4-14, and opposes Comments of PageMart, Inc. at pp. 4-12. Second, Radiofone urges that all commercial mobile service providers must receive co-carrier

¹ 47 U.S.C. § 332(d)(1) (1993). Hereinafter, where these Reply Comments refer to "public" paging service, or paging service "offered to the public", such references are intended to mirror the statutory definition of "service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public." 47 U.S.C. § 332(d)(1) (1993).

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status to ensure non-discriminatory interconnection terms. Therefore, Radiofone concurs with Comments of the Joint Commenters at pp. 4-7, Comments of PageNet at pp. 25-29, and PageMart at pp. 10-13, to the extent that they insist on non-discriminatory interconnection terms.

I. INTEREST OF RADIOFONE

Radiofone provides private carrier paging (PCP) service, as well as common carrier paging services. Radiofone also is a cellular carrier. In operating both its common carrier paging, and PCP service, Radiofone uses nearly identical store-and-forward technology to conserve air time by batching pages. The Commission's ruling in this docket will impact the regulatory status of Radiofone's paging operations.

Like many wireless communications companies, Radiofone currently operates both in the more highly regulated common carrier environment, and in the relatively less regulated private carrier environment.

II. THE COMMISSION HAS ARTICULATED THE APPROPRIATE STANDARD BY FOCUSING ON THE SERVICE OFFERED.

In this docket, the Commission will give effect to Congressional intent that a more level playing field should be established in regulating providers of commercial mobile services. Consistent with its intent to level the playing field, Congress has directed the Commission to implement statutory definitions of "commercial mobile service" and "private mobile service" by specifying the terms of their

regulation. NPRM at para. 13. One of the services to be classified in this proceeding is paging operations utilizing store-and-forward technology and offering service to the public. The key issue with respect to regulation of store-and-forward paging is whether it offers to the subscriber interconnected service.² In other words, does store-and-forward paging "allow[] a subscriber to send or receive messages over the public switched network"? NPRM at para. 16.

In articulating the standard by which it will define interconnected service, the Commission has properly distinguished between systems that are physically interconnected to the public switched network (PSN), and those that make available to subscribers fully interconnected service. NPRM at para. 15. The Commission should "focus on the service being offered" to customers, rather than on the physical mechanics of interconnection. See NPRM at para. 19.

² Paging services offered to the public satisfy the other elements specified by statute for classification as commercial mobile service. There can be little dispute that public paging services are "provided for profit", and that they are offered "to the public" or "to such classes of eligible users as to be effectively available to a substantial portion of the public." See 47 U.S.C. § 332(d)(1) (1993). Since it easily meets these definitions, store-and-forward paging offered to the public would be classified as a "commercial mobile service" where it is found to offer service that is interconnected to the public switched network.

A service-based test for interconnection would give more consistent results, and would more faithfully reflect Congressional intent. Since technology changes constantly, or a single technology often is used for multiple purposes, a test based upon a certain technological attribute³ is bound to be more difficult to administer and to give conflicting results. Moreover, by speaking of interconnected service as one that must be broadly available, Congress indicated an intent that interconnection should be judged by its effect on consumers, not by the technical characteristics producing the telephone links. See NPRM at para. 15.

III. STORE-AND-FORWARD PAGING SOLD TO THE PUBLIC OFFERS INTERCONNECTED SERVICE SINCE IT IS OPEN-END AT BOTH ENDS

Store-and-forward paging offers interconnected service since it does not restrict eligibility for use, nor does it limit the location of points of origination and destination. The NPRM properly noted that private line services may be physically interconnected to the PSN, but not offer interconnected service. Private line is not interconnected service, since it restricts who can use the service. For example, private line service may restrict eligible users to employees of the company or governmental unit renting or operating the service. Private line also provides service

³ E.g., a physical "break in interconnection", see Telocator Network of America v. FCC, 761 F.2d 763 (D.C. Cir 1985) ("Millicom").

between limited points of origin and destination. For example, private line service typically may be originated and terminated only within the subscribing company's buildings or plant, even though those buildings may be located in different states, or on different continents.

By contrast, store-and-forward paging offered to the public does not restrict eligible users or locations. Anyone can send a message over a public store-and-forward paging service, regardless of employment (or lack of employment) and regardless of other affiliation. Similarly, a message can be sent from any location accessed by the PSN. Therefore, store-and-forward paging services offered to the public are "open-end" on the originating end.

Similarly, public store-and-forward paging services do not differentiate as to eligible subscribers, and will broadcast a message anywhere within the paging company's (or network's) service area. The only limitation is the size of the service area to which the customer wishes to subscribe. Increasingly, regional, national (and soon to come - intercontinental) service areas are offered. Therefore, public store-and-forward paging services are "open-end" on the receiving end as well.

To the extent that store-and-forward affects the consumer's access to the public switched network, it actually enhances access. Store-and-forward technology is utilized to conserve air time by briefly batching messages,

and sending them in spurts, rather than continuously. As such, the technology allows a much higher volume of air traffic on a given frequency, and also speeds up the rate of transmission for systems with any appreciable volume. Customers subscribing to paging services that suddenly ceased using store-and-forward technology likely would feel that their access to the PSN had been diminished, due to the considerably longer lag times in sending messages that would result. For this reason, Radiofone finds it somewhat ironic that store-and-forward would even be considered as not providing interconnected service.

The NPRM cited the Millicom cases⁴ as possible authority that store-and-forward does not provide interconnected service. However, these cases are consistent with store-and-forward as providing interconnected service, since they satisfied a test mandated by Congress that is different from the one now applicable. Old Section 332(c) of the Communications Act, 47 U.S.C. § 332(c) (1982), focused the test on whether unlicensed users (e.g., subscribers) controlled the physical land station, not on the type of service provided. Telocator Network of America v. FCC 761 F.2d 763, 767 (D.C. Cir. 1985). Therefore, store-and-forward was found to provide the "break" in

⁴ In re Applications of Millicom Corporate Digital Communications, Inc., 65 RR 2d 235, 237-239 (1983), aff'd sub nom, Telocator Network of America v. FCC, 761 F.2d 763 (D.C. Cir. 1985) ("Millicom").

interconnection denying subscribers physical control over the station.

However, when it passed the Omnibus Budget Reconciliation Act of 1993, Congress recently rescinded this test by striking old Section 332(c), and replacing it with a new Section 332(c), and Section 332(d), 47 U.S.C. §§ 332(c), and (d) (1993). The Commission correctly interprets these new sections as focusing on the nature of service offered to subscribers, rather than on who controls the physical station. Therefore, the Millicom cases are no longer relevant to classifying store-and-forward as interconnected service since they were based upon a different (and rescinded) test.

IV. COMMERCIAL PAGING SERVICES MUST BE GUARANTEED NON-DISCRIMINATORY INTERCONNECTION

Radiofone urges that commercial paging services must receive interconnection of the same quality, and on the same terms as that provided by local exchange carriers (LECs) to their own paging subsidiaries. The simplest and best way to ensure equal access to the public switched network by all commercial paging services is to grant them co-carrier status. There are at least two reasons that non-discriminatory interconnection should be mandated, and co-carrier status should be granted.

First, independent commercial paging services, such as Radiofone's, compete with identical services offered by LECs. Congressional (as well as Commission) intent that

like services should be regulated in the same manner, and should compete on a level playing field, would be stymied with anything less than full FCC regulation of interconnection, and grant of co-carrier status.

Second, the Commission appears to be setting a regulatory framework for the future by encouraging development of an alternative wireless local loop. The best way to encourage introduction of new wireless services competing with, and interconnecting to the landline telephone system, is to assure ahead of time that these new services will be regulated as co-carriers so long as they offer open-end service. Evolution of a wireless local loop would be encouraged if it does not matter whether a particular wireless service interconnects directly to the landline LEC, or indirectly via other wireless carriers. Therefore, any wireless service providing open-end access to the public switched network should be afforded co-carrier status.

CONCLUSION

WHEREFORE, it is respectfully requested that the Commission adopt the above recommendations in General Docket No. 93-252.

Respectfully Submitted,

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SERVICE LIST

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